

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

ABID GHUMAN et al.

Serial No.: 10/709,045

Filed: April 8, 2004

For: METHOD OF DESIGNING A VEHICLE CLOSURE ASSEMBLY LINE

Attorney Docket No.: 81095799 (FMC 1664 PUS)

Group Art Unit: 3726

Examiner: Christopher M. Koehler

REPLY BRIEF UNDER 37 C.F.R. § 41.41

Mail Stop Appeal Brief - Patents
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is in response to the Examiner's Answer mailed on April 11, 2007 for the above-identified patent application.

**A. Claims 1-4 Are Patentable Under 35 U.S.C. § 102(b)
Over U.S. Patent No. 5,127,569 Because The
Examiner's Rejection Mistakenly Rests On
The Principles Of Inherency**

In the Examiner's Answer, in support of the rejection of independent claim 1 under 35 U.S.C. § 102(b) on the grounds that it is anticipated by U.S. Patent No. 5,127,569 to Sekine ("569 patent"), the Examiner stated:

. . . the Examiner does allege that the acts of designing the manufacturing line and identifying processes and work cells are inherent to the overall process of the alleged invention as well as the cited reference.

See Examiner's Answer, p. 6.

Put simply, the Examiner asserts that a manufacturer could not practice the invention of the '569 patent without first designing the manufacturing line and identifying the processes and the work cells employed by that manufacturing line. This is incorrect. A manufacturer need not engage in these steps to implement the assembly line of the '569 patent. For instance, rather than designing an assembly line, a manufacturer may simply implement a second assembly line identical to one that the manufacturer currently has in operation. Alternatively, a manufacturer may simply copy a competitor's assembly line. Or a manufacturer may reconstitute a previously discontinued assembly line. In each of these alternatives, the methods disclosed in the '569 patent may be practiced without first engaging in the steps of (1) identifying a manufacturing process or (2) identifying work cell sets or standardized work cells as required by Applicants' claims 1.

The Examiner admitted that the '569 patent fails "to explicitly state the acts of designing the manufacturing line and identifying processes and work cells . . ." but states that these elements are inherently present in the '569 patent. *See* Examiner's Answer, p. 5. In order to rely on inherency, the missing descriptive matter **must necessarily be present** in the thing described. Inherency **may not be established by probabilities or possibilities**. Because it is possible to practice the method of the '569 patent without engaging in the missing designing and identifying steps of Applicants' invention, the '569 patent does not inherently disclose the designing and identifying steps of Applicants' invention and therefore does not anticipate Applicants' invention under 35 U.S.C. § 102(b). Accordingly, it is respectfully requested that these rejections be reversed.

**B. Claims 1-4 Are Patentable Under 35 U.S.C. § 102(b)
Because There Is No Disclosure In The '569 Patent Of
"Standardized" Work Cells Or "Standardized" Workpiece
Presenters Or "Standardized" Processing Tools**

Independent claim 1 requires that certain elements be "standardized." Claim 1 requires the identification of a plurality of "standardized" work cells and that each work cell

have at least one “standardized” workpiece presenter and at least one “standardized” processing tool. The claim term “standardized” may not be ignored. “To anticipate, every element **and limitation** of the claimed invention must be found in a single prior art reference, arranged as in the claim.” *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001).

The Examiner ignores this limitation when relying on the ‘569 patent. There is no disclosure in the ‘569 patent that work cells, workpiece presenters or processing tools are “standardized.” Rather, the ‘569 reference discloses “a plurality of sub-lines,” “each sub-line including a plurality of workpiece carriers” and “a workpiece positioning device mounted on each of the workpiece carriers.” See the ‘569 patent, claim 1. Because the ‘569 patent fails to disclose “standardized” work cells, “standardized” workpiece presenters, and “standardized” processing tools, the ‘569 patent fails to anticipate Applicants’ invention under 35 U.S.C. § 102(b). Accordingly, it is respectfully requested that these rejections be reversed.

Respectfully submitted,
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